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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,

Plaintiff,

VS.

LELAND YEE,

Defendant.

No. CR 14-0196 CRB-2

San Francisco, California

Wednesday, February 24, 2016

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

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**BY: William Frentzen**

**Susan E. Badger**

**S. Waqar Hasib**

**Assistant United States Attorney**

For Defendant:

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88 Kearny Street, 10th Floor  
San Francisco, California 94108-5530

**BY: James Lassart, Esquire**

**Nicholas C. Larson, Esquire**

Also Present:

Chris Carrubba, U.S. Probation

Reported By: Katherine Powell Sullivan, CSR No. 5812, RMR, CRR  
Official Reporter

Wednesday - February 24, 2016

10:00 a.m.

P R O C E E D I N G S

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**THE CLERK:** Calling case CR 14-0196, the United States of America versus Leland Yee.

Appearances, Counsel.

**MS. BADGER:** Good morning, Your Honor. Susan Badger, William Frentzen, and Waqar Hasib on behalf of the United States.

**MR. LASSART:** Good morning, Your Honor. James Lassart and Nick Larson appearing on behalf of Leland Yee.

**THE COURT:** Good morning.

And Mr. Yee is --

**MR. LASSART:** -- right there.

**THE COURT:** Okay.

**MS. CARRUBBA:** Good morning, Your Honor. Chris Carrubba with Probation.

**THE COURT:** Good morning.

So I want to start, first, with the sentencing of Mr. Yee, and then move to Mr. Keith Jackson, and then proceed accordingly.

And, obviously -- well, I don't know how obvious it is.

The Court has received the presentence report as well as numerous filings in connection with the sentencing procedure.

And you had an opportunity, Mr. Lassart, to share these

1 documents with your client; is that right?

2 **MR. LASSART:** I have, Your Honor.

3 **THE COURT:** All right. And I have received from you,  
4 as to the presentence report, several objections. And I want  
5 to address those objections based upon what your arguments are  
6 as well as the filings in this case.

7 You have raised, I would say, two principal objections to  
8 the presentence report.

9 Well, maybe I should indicate for the record what the  
10 presentence report has found. The presentence report has found  
11 a total adjusted offense level of 27 and a criminal history  
12 category of I. A guideline provision, then, would be 70 to 87  
13 months under the findings of the presentence report.

14 Obviously -- and people may not know this. It is the task  
15 of the Court in a sentencing, first, to address what the  
16 appropriate guideline range is. After that is addressed, the  
17 Court then turns to what are called the 3553(a) factors, the  
18 Sentencing Guideline being one of them. But there are several  
19 other factors -- I think six in number, maybe seven -- that the  
20 Court must consider in imposing a sentence.

21 So the first task, obviously, is to address the total  
22 offense level of 70 to 87 months.

23 The first objection is an objection that goes to  
24 paragraphs 32 through 37 of the presentence report. And it  
25 focuses on the question of how much money was offered or

1 received by Mr. Yee in connection with the criminal offense to  
2 which he pled guilty. The presentence report indicates that it  
3 was \$104,600; thereby warranting an enhancement of 8 levels.

4 And, by the way, if I've got that wrong, if I have any of  
5 this wrong -- other than ultimately -- you should jump in. But  
6 it's my understanding the presentence report indicates an  
7 enhancement of 8 points for that level, which is found in  
8 paragraph 61.

9 **MR. LASSART:** We agree with that, Your Honor.

10 **THE COURT:** It is your view, the defendant's view,  
11 that that hasn't been sustained by the evidence and that the  
12 appropriate level would be less than that. But I believe --  
13 less than 95,000.

14 And after reviewing the evidence, I am of the opinion that  
15 it is not disputed, it is not disputed that more than \$40,000  
16 was received in connection with this entire operation to which  
17 the defendant pled guilty.

18 Is there a dispute as to that?

19 **MR. LASSART:** No. I think it's 44, actually.

20 **THE COURT:** I think it's 44 too. In other words --  
21 and the key as to that would be if it's more than \$40,000,  
22 there would be an enhancement of 6. Is that right?

23 **MS. CARRUBBA:** Yes.

24 **THE COURT:** Rather than 8?

25 **MS. BADGER:** Yes.

1           **THE COURT:** And the Court will so find as follows,  
2 since not disputed, that, more than \$40,000 is appropriate.  
3 Even if I eliminated the \$60,000, which is contested, a 6-level  
4 enhancement is warranted. Therefore, pursuant to Federal Rules  
5 of Criminal Procedure 32(i)(3)(B), the Court does not rule on  
6 this dispute because the Court will not consider the \$60,000 as  
7 a contributing factor to either the guideline or the sentence.

8           So that's my response to objection number 1.

9           Objection number 2 goes to the number of weapons that were  
10 part of the offense to which the defendant pled guilty.

11           And the issue basically is, as found in paragraph 68, the  
12 presentence report indicates that there should be a 10-level  
13 enhancement for the weapons conspiracy because 200 or more  
14 weapons was involved.

15           The defense takes issue with that and states that there  
16 was never a mention in the evidence as to the number -- as to  
17 that particular number. There was evidence, however, of a  
18 lesser number. And the Court, having reviewed the evidence,  
19 finds as follows:

20           The Court sustains the objection on the basis that the  
21 number, 200 weapons, was not mentioned by the defendant, and  
22 then becomes somewhat speculative as to whether or not 200 or  
23 more weapons was used.

24           The only number the defendant referenced on -- I think  
25 it's March 5th, 2014, was the availability of 100 weapons.

1 According to the evidence that was in the -- over here, the  
2 wiretap or the body tap, I don't know which it was, the  
3 defendant told the undercover officer that there are  
4 approximately 100 rifles currently available.

5 The Court finds that this statement, coupled with the  
6 defendant's repeated efforts in promoting an illegal arms deal,  
7 plus the added offer of payment by the undercover officer of up  
8 to two-and-a-half million dollars, accompanied by a list of  
9 desired weapons, establishes by clear and convincing evidence  
10 that the scope of this offense was at least 100 weapons, and  
11 justifies the enhancement of 6 points as distinct from the  
12 higher number of points.

13 None of these facts, in the Court's view, were seriously  
14 contested; and, therefore, I would adjust the offense level  
15 downward.

16 So the Court's findings in that regard would be as  
17 follows:

18 As to paragraph 61 of the combined group, it is plus 6.  
19 Paragraph 66 would give an adjusted offense level of 26.

20 As to group number 2, paragraph 68 would be changed to  
21 plus 8. And paragraph 72 would be 26.

22 And as group number 3, it would remain the same as to 16.

23 And when you add those particular counts, you would get a  
24 level of -- paragraph 80 would be 26, paragraph 82 would be 28,  
25 and making the adjustment of acceptance of responsibility down

1 to 25.

2 Therefore, the Court would find that for purposes of  
3 sentencing the adjusted offense level is 25; the criminal  
4 history category is I; and the sentencing range is 57 to 71  
5 months.

6 Now, I note that this is all over the objection of the  
7 government. The government believes that the evidence is to  
8 the contrary than would justify what was in the presentence  
9 report. However, it's up to the Court to weigh the  
10 government's objection, weigh the defense objections. And the  
11 Court then, after weighing it, this is what the Court finds.

12 So are there any -- oh, there's a third objection, which  
13 is that the presentence report did not include certain bases  
14 for either variances -- oh, "variances," I think, would be the  
15 right word, or "departures." And the Court notes that with  
16 respect to that objection that the Court will consider all of  
17 that in connection with the sentencing.

18 So my question to the parties -- really basically to you,  
19 Mr. Lassart, is, while I've addressed the objections in a  
20 particular way, do you have any further comments on the  
21 Sentencing Guideline range?

22 Is it clear what it is? It is 57 to 71 months. Now,  
23 that's different from what you've presented to me. You  
24 presented to me, I think, 53 to --

25 **MR. LASSART:** 51 to 63.

1           **THE COURT:** 51 to 63. So it's a different range.  
2     Though, of course, it does include -- it's an adjacent range,  
3     so it doesn't include some of the same figures.

4           Go ahead.

5           **MR. LASSART:** The only enhancement that I'd like to  
6     address with the Court is the 200 weapons. And the reason for  
7     that is though that there is a discussion of 100, that I want  
8     to call the Court's attention to the authorities that we have  
9     provided with -- and I'm speaking specifically to -- and I have  
10    to look at this to pronounce it. It's *U.S. vs. Nadirashvili*,  
11    and also *Spears* [sic].

12           Those two cases out of the Second Circuit speak in terms  
13    of what is necessary to support an enhancement. And in those  
14    cases, the kinds of evidentiary support to support an  
15    enhancement took more than the words of the conversation, the  
16    way I interpret those cases.

17           In this case, there is no corroboration outside of the  
18    discussion in the March time frame in which we're not talking  
19    automatic weapons. There's a hundred rifles. The Court has  
20    that correct. That's recorded. But there is no showing in the  
21    full investigation of the government that there is any history  
22    of trafficking or firearms in Leland Yee's history.

23           The Court is aware that the government has recorded, up  
24    until July of 2014, 6600 conversations of then Senator Yee. Of  
25    those conversations, there are zero references to firearms,



1 weapons, trafficking, anything of that nature. Nothing that  
2 you would normally expect if you were dealing with a true  
3 trafficker.

4 The government, post this investigation, tried to find  
5 evidence of trafficking. We have been given no evidence that  
6 there was any trafficking or evidence of his possession of  
7 weapons.

8 In addition, they searched his premises and he did not  
9 have any firearms there. There was a single note found there  
10 with a list of weapons, ten styles of weapons, that was handed  
11 to him by the undercover agent during the course of a  
12 conversation.

13 There is no indication that there is any -- there is no  
14 evidence, that we've ever seen, that Leland Yee ever found or  
15 went out and purchased weapons. There is nothing that shows  
16 more than conversation.

17 And because of the fact that this standard is clear and  
18 convincing, I think the evidence shows -- or the lack of  
19 evidence shows that there is any form of proof by clear and  
20 convincing evidence. That is what I have been able to observe  
21 from the evidence before the Court. That is why I believe,  
22 because the differential is now between 8 and zero, that that  
23 is a significant enhancement.

24 **THE COURT:** And the government's response?

25 **MS. BADGER:** Well, Your Honor, the government is not

1 maintaining that Senator Yee had a history of weapons  
2 trafficking. But if there's one thing that the evidence in  
3 this case shows is that Senator Yee was opportunistic. And he  
4 was also desperate for money.

5 And when it was -- it was Keith Jackson who first  
6 presented the idea to undercover Agent David Jordan that Leland  
7 Yee had access to weapons as another means of gaining campaign  
8 contributions and money from undercover Agent Jordan.

9 At that point in time, the wiretaps were not going. But  
10 there were a number of conversations that Agent Jordan had with  
11 both Keith Jackson and with Senator Yee. It wasn't just one  
12 conversation with Senator Yee. And as we recounted in our  
13 sentencing memo, Senator Yee was quite eager to convince Agent  
14 Jordan that this was a real opportunity.

15 We have photographs showing Senator Yee in the Philippines  
16 with individuals with guns. I have those copies for the Court,  
17 if the Court would like to see them. That was something that  
18 Senator Yee discussed with Agent Jordan, that he had been in  
19 the Philippines; that Dr. Lim had connections there.

20 So he was quite convincing that this was a real  
21 opportunity. And the evidence suggests that it was. More than  
22 one individual was interviewed who said that Dr. Lim had  
23 relatives in the Philippines; people had connections.

24 And Senator Yee -- the discussions were things like  
25 containers of weapons. It was out of Senator Yee's mouth that

1 the phrase we have -- there's a hundred rifles available. That  
2 was --

3 **THE COURT:** I'm trying to figure out, why isn't that  
4 enough? In other words, the defendant, not the agent, it's the  
5 defendant who says, I have a hundred weapons available. There  
6 are a hundred weapons available.

7 The agent says, We can pay you somewhere between a quarter  
8 of a million dollars and two-and-a-half million dollars.

9 Now, the deal wasn't consummated. I understand that. But  
10 it doesn't have to be consummated under the law, at least in  
11 the Court's view for this enhancement.

12 By the way, I may have misspoken. I hope I didn't. But  
13 the enhancement is 8 points. If I said 6, I misspoke.

14 **MS. BADGER:** You said 6 at one point. But when you  
15 added everything up you said 8.

16 **MR. LASSART:** I said zero to 8. I understand it was  
17 8.

18 **THE COURT:** I appreciate that. It's 8 under the  
19 guideline.

20 I guess what I'm saying, Mr. Lassart, is here you have  
21 several factors that aren't in dispute. One is Mr. Yee says, I  
22 have a hundred weapons -- a hundred rifles available. Two, the  
23 agent says, We can pay between a quarter million and  
24 two-and-a-half million. Three, they give him a list of the  
25 kinds of weapons that he wants. Four, there are meetings that

1 take place. Those four factors -- meetings with arms agents.  
2 Those four factors seem to suggest that an enhancement is  
3 appropriate.

4 I'm more concerned about the number because it's the  
5 enhancements. He pled guilty to the weapons. He admitted that  
6 he was involved in a scheme to import weapons. The issue here  
7 is, there was no admission, when he pled guilty, as to the  
8 number of weapons. And that's really what the contest is  
9 about. It does have a bearing on the Sentencing Guideline.  
10 But the question is, is that enough evidence? The Court thinks  
11 it is. You disagree.

12 **MR. LASSART:** Yes, Your Honor.

13 **THE COURT:** Yeah.

14 **MR. LASSART:** May I just address a couple of points?

15 **THE COURT:** Of course.

16 **MR. LASSART:** The discussion about we have pictures of  
17 Leland Yee with armed guards, they are well aware that that's  
18 long prior to any discussion. And those are people who are  
19 guarding them when he was there in the Philippines trying to  
20 set up a facility or talking in terms of getting a dialysis  
21 facility there.

22 Now, everybody they have interviewed in the Philippines  
23 and they can find -- and they've interviewed the alleged  
24 Russian arms dealer who's an art dealer, monuments, then  
25 Dr. Lim, who has family in the Philippines, who said his nephew

1 was going to be involved. When they talked to him, he said, My  
2 nephew has nothing to do with firearms.

3 The question is in this, the truth of the matter is, could  
4 he ever deliver? That's really what these cases say. And the  
5 government has tremendous resources. And I can pretty much  
6 guarantee to the Court that if they had some evidence that he  
7 could ever deliver, they would have it before you.

8 I think you need more than talk. Because there has been  
9 admission to the discussions. That's the conspiracy. But the  
10 number has never been real. And it is -- the question is, who  
11 in the sting operation was stinging whom at the time? That's  
12 really what the question was. And I don't think that it's  
13 proof that he was able to traffic in a hundred firearms.

14 They mentioned the container. The container came out of  
15 the mouth of Keith Jackson when he's speaking without Leland  
16 Yee present. And he says -- this is during the course of  
17 another conversation before Leland Yee ever spoke to these  
18 agents about any firearms. That there's a, you know, container  
19 load of AK47s that this Russian arms dealer has. And the  
20 Russian arms dealer, of course, is the one who carves  
21 monuments.

22 So I believe the question really is, is it real? And have  
23 they proved that he's able to deliver it, to give them a  
24 hundred firearms? That's the problem.

25 **MS. BADGER:** I would like to point out, Your Honor,

1 that Senator Yee pled guilty to conspiracy, conspiracy to  
2 knowingly import and bring into the United States any firearm  
3 and ammunition.

4 That contemplates not only an agreement but an agreement  
5 to accomplish a crime. And Senator Yee pled guilty to that.  
6 So to step back now and say there was nothing real here, it was  
7 all talk, is contrary to his guilty plea. I think that's worth  
8 pointing out.

9 Another statement by Senator Yee, when he was dealing with  
10 Agent Jordan, at one point he said to Agent Jordan, "I have  
11 spoken to Dr. Lim. I told him you're not going to send a ship  
12 to the Philippines for just 50 rifles."

13 So Senator Yee understood perfectly well the goal here,  
14 and was representing he could accomplish it. We dispute -- we  
15 say that he did have the wherewithal to accomplish it. And he  
16 pled guilty to that.

17 So all of those things taken into consideration, Your  
18 Honor, I think the Court is correct in finding that there is  
19 sufficient evidence to support the enhancement.

20 **THE COURT:** Do you have one other thing to add? Yes.

21 **MR. LASSART:** Well, Your Honor, you know, the -- this  
22 Court knows the overt acts of any agreement can be accomplished  
23 by a co-conspirator, not by Senator Yee.

24 And in this instance, like I've said in my papers, we have  
25 a very skilled undercover agent who understands the business of

1 conspiracy and the business of being an undercover agent. And  
2 all of the leading in this, where enhancement is discussed, is  
3 created at the instance of the undercover agent doing his job  
4 and doing it very well.

5 But for all their capacity, they can't prove that Senator  
6 Yee, who has admitted the agreement, was able to deliver a  
7 hundred weapons of anything.

8 **THE COURT:** Well, I don't know. I mean, to the extent  
9 you maintain that there is inadequate evidence that he actually  
10 could deliver the hundred or more weapons, I don't have that  
11 evidence before me. I have the evidence, as I've indicated,  
12 the evidence of the statements. You start from the point is  
13 that he enters into a conspiracy to do it.

14 Now, if he enters into a conspiracy to do it and couldn't  
15 do it at all, I'm just trying to figure out legally why he  
16 would enter into a guilty plea saying yes, I conspired to  
17 deliver these weapons. Maybe it's, I conspired but I couldn't  
18 do it. I didn't hear that. I didn't hear that at the time.  
19 And I don't find it credible now.

20 Secondly, in terms of -- and I think I'm going to hear  
21 more of this today about where is the crime created? Who's  
22 suggesting what and so forth? I want to tell you, it's Senator  
23 Yee who said the hundred weapons. He's the one who said it.  
24 He participated or arranged these meetings.

25 And I don't think, to the extent we're talking about Keith

1 Jackson, that you can simply take a person who is your emissary  
2 and say, well, that's him; you know, I had nothing to do with  
3 it.

4 The conspiracy was that he and Keith Jackson participated  
5 in this. He's responsible legally, I think morally as well,  
6 for the consequences of the conspiracy, provided that it's  
7 foreseeable. Here it was entirely foreseeable. The details  
8 weren't foreseeable. Whether or not and how those weapons  
9 would be physically shipped or obtained, I don't have an answer  
10 to that. You're quite right, that's not in the record. It  
11 didn't proceed to that point. It didn't proceed to that point.  
12 But the crime was completed, you know, well before that point.  
13 And he pled guilty to it.

14 So the Court appreciates your arguments and finds that --  
15 by clear and convincing evidence that the enhancement is  
16 warranted. And that would be an 8-level enhancement.

17 So is there anything further before we proceed to  
18 sentencing?

19 **MR. LASSART:** Nothing further on those subjects, Your  
20 Honor.

21 **THE COURT:** Okay. So I'd like to hear, first, from  
22 the government. And then I'll hear from you, Mr. Lassart. Of  
23 course, I'll hear from Mr. Yee.

24 **MS. BADGER:** Your Honor, thank you.

25 As the Court knows, the government is recommending a



1 sentence of 96 months or 8 years. We submit that that's  
2 warranted for a number of reasons.

3 The Court has looked at the guidelines. As the Court is  
4 well aware, and as the Court stated at the outset, that is one  
5 of the factors that the Court is to consider. But there are  
6 other factors under Section 3553(a), one of which is a sentence  
7 that reflects the nature and seriousness of the offense.

8 And, in this case, we submit that the offense was  
9 unquestionably serious. It goes to the most fundamental abuse  
10 of the public trust and what public corruption is all about.

11 The public elects its officials, including legislators --  
12 and Senator Yee is no exception -- with the understanding that  
13 these public officials are going to do their jobs objectively  
14 and fairly, without any consideration for personal benefit,  
15 especially financial benefit.

16 The expectation is that our elected officials are going to  
17 act solely in the best interests of the citizens, the people  
18 who elect them. And that's the bargain that citizens make in  
19 electing officials. And it's based on a considerable amount of  
20 trust and faith, which is often tested, I think, in this  
21 country these days. There's a lot of citizens who are  
22 sceptical about their elected officials and whether they are,  
23 in fact, acting objectively and fairly and in their  
24 constituents' best interests.

25 But, as I say, the system is based on faith and trust.

1 And we submit, Your Honor, that Senator Yee abused that trust  
2 and faith in the worst possible way. It wasn't actually for  
3 personal financial wealth. It wasn't to buy a house or to go  
4 on fancy trips. It was to retain power as a public official.  
5 He was about to be termed out. Or at the end of 2014, he was  
6 going to be termed out as a senator. He often discussed on the  
7 wires that he wasn't ready to retire. He wanted to have a job  
8 for eight more years. He kept talking about "eight more  
9 years."

10 And, in fact, the public office he was seeking to maintain  
11 was a public office with more power. Not state senator, but  
12 now he had his eyes on a Secretary of State position, which is  
13 a statewide position, an important office, an office that  
14 oversees elections. And in order to achieve that goal, Senator  
15 Yee readily latched on to and aggressively pursued any possible  
16 money.

17 The undercover agents all made clear that there was no  
18 free money. The agent 4773, Mike King, said that from the very  
19 beginning, one of the very first meetings with both --  
20 separately, but with both Senator Yee and with Keith Jackson.

21 And it was made clear by all three undercover agents that  
22 they expected official acts in exchange for any money given to  
23 Senator Yee. And only once did Senator Yee hesitate and say  
24 no. And that was a time when Agent Jordan asked for a favor  
25 for Raymond Chow. And the only reason Senator Yee said no was

1 because getting connected to Raymond Chow was too dangerous.  
2 It didn't have anything to do with the fact that it would  
3 actually be illegal to exchange a favor for a campaign  
4 donation. Otherwise, there was never any hesitation.

5 Senator Yee repeatedly mentioned to the undercover agents  
6 that he knew this was illegal. *Quid pro quo* exchange, official  
7 act for money is illegal. He fully understood what he was  
8 doing was illegal. He said on more than one occasion he could  
9 go to jail.

10 And he made the choice. He engaged in the risk/benefit  
11 analysis, and he voluntarily engaged in these bribes. He  
12 pursued the undercover agents. He pursued the money. No one  
13 twisted his arm.

14 In the course of this serious conduct, there are a number  
15 of aggravating facts. One is there were multiple bribes.  
16 There was \$10,000 paid for acts performed at the request of  
17 Mike King, the Well Tech letter and the phone call.

18 There was \$6,800 paid by Special Agent Jordan for the Chee  
19 Kung Tong declaration certificate.

20 And there was \$11,000 paid by undercover agent 4180, Mike  
21 Sweets, for the introduction, the meeting with state senator 1.  
22 And there was \$10,000 paid for the introduction to state  
23 senator 2.

24 Second aggravating factor -- this was over a period of  
25 time. The first ask was back in September 2012. This was a

1 year after Keith Jackson and Senator Yee had been cultivating  
2 Mike King, UCD 4737. And the last payment was in September  
3 2013.

4 So over the course of a year, Senator Yee had time to  
5 reflect. He had time to choose. And he did not walk away. In  
6 fact, there were numerous conversations intercepted over the  
7 wiretaps where he complained quite bitterly about the fact that  
8 he had performed and where was the money.

9 Third aggravating factor is that he came up, Senator Yee  
10 came up with these extortion schemes. Had nothing to do with  
11 the FBI. These are the schemes involving the California State  
12 Athletic Commission issue and the workers' comp for  
13 professional athletes.

14 And this is very serious public abuse because it goes to  
15 one of Senator Yee's -- or maybe the most important duty, his  
16 vote on legislation. But he was quite mercenary about it.

17 He said, at one point, in regards to the Athletic  
18 Commission vote, "All I'm interested is getting something out  
19 of this guy."

20 And as to the workers' comp, Keith Jackson put it quite  
21 succinctly. He said, "Leland, go with the owners. The players  
22 don't write checks." And Senator Yee said, "Yeah, I don't  
23 care."

24 There was also, as the Court knows, crimes beyond the  
25 bribery. There was money laundering involving -- excuse me --

1 in two instances involving the bribery funds. And, as we  
2 discussed at some length, there's a weapons trafficking  
3 conspiracy.

4 So opportunities presented themselves in the form of these  
5 undercover agents. And especially in terms of weapons  
6 trafficking, that was something that Keith Jackson and Leland  
7 Yee brought to the undercover agent. And, again, Senator Yee  
8 was mercenary about it. He said, at one point, even though he  
9 was supposedly supporting gun control legislation, he said,  
10 "I'm agnostic. People need what they need."

11 And finally in aggravation, Senator Yee lied to the agents  
12 when they came to his house. They did not arrest him. At that  
13 point he was not in custody. He was not compelled. And he  
14 lied about any number of things.

15 So the government would submit, Your Honor, without a  
16 doubt this is a serious offense. And the sentence should  
17 reflect that. Just as important is the purpose of deterrence  
18 and respect for the law, that the sentence reflect that.

19 This is Senator Yee's choice to make a career of being a  
20 public official, to hold public office, to be a public figure.  
21 He knew exactly what he was doing. His fall has been public  
22 and no doubt humiliating. And it's regrettable that it has  
23 affected his family. And there's some suggestion by the  
24 defense that this is punishment enough.

25 The government would submit that it is not. The point is

1 that this matter has been very public. Citizens are looking to  
2 see how the Court regards this offense; how it treats this  
3 offense. Fellow legislators, no doubt, are looking to see what  
4 the sentence is going to be. They are watching. They're  
5 aware. And it's not just what the Court says about this  
6 offense, but it's going to be what the Court does about this  
7 offense. That, frankly, is the bottom line.

8       Whatever the Court does will send a very loud and clear  
9 message about how such illegal conduct should be treated. And  
10 we would submit to you, Your Honor, that like other public  
11 officials, other elected people who are looking on, they are  
12 going to do the same risk/benefit analysis as Senator Yee did.  
13 He decided it was worth the risk.

14       We submit that it's important that the Court convey that  
15 it is not worth the risk, and there will be severe consequences  
16 if an elected official engages in this kind of conduct.

17       We recognize that an 8-year sentence is substantial. We  
18 submit that it meets the criteria of Section 3553, which is  
19 sufficient but not more than necessary to fulfill the 3553(a)  
20 purposes.

21       We recognize this would be an upward departures under the  
22 guidelines. We mention this in our briefing, but there is an  
23 application note to Section 2C1.1, the public corruption  
24 guideline provision that states that, "An upward departure may  
25 be warranted if the Court finds that the defendant's conduct is

1 part of a pervasive corruption that may cause loss in public  
2 confidence in the government." And we submit that the facts  
3 fit that here. And, as I mentioned, the guidelines are only  
4 one factor. There are a number of aggravating factors here.

5 On that, we would submit it, Your Honor. Thank you.

6 **THE COURT:** Mr. Lassart?

7 **MR. LASSART:** Your Honor, I believe, in looking at  
8 3553, that the Court has before it both the letters that  
9 have -- that have been submitted as well as the videotape of  
10 family members and those individuals that Senator Yee has  
11 helped during the course of his 40-some-odd years in public  
12 service.

13 He has championed any number of causes. And we have  
14 submitted to the Court a list of over a hundred bills that have  
15 passed into chapter and that deal with healthcare, children,  
16 social services, those kinds of removal from the budget of  
17 funds that would help healthcare and education. He supported  
18 that throughout his career.

19 In this instance -- and it is not my intention to minimize  
20 what it is that Senator Yee has pled to with regard to the  
21 activities for which he took the \$44,000. However it, has to  
22 be looked at from the standpoint of, one, he took no money from  
23 the public, number one. They did not take public funds from  
24 anyone.

25 Number two, it is quite obvious from the history and

1 background, Senator Yee has not enhanced his life in a  
2 luxurious lifestyle while he was a public official. He doesn't  
3 have these troves of money you'll hear about on those  
4 individuals who have in the past been involved in public  
5 corruption.

6 Now, what I can tell the Court is that Senator Yee's  
7 dealing with certain of these issues -- first of all, let me  
8 talk about the, quote, extortion scheme. There was no  
9 extortion scheme that -- as characterized. And it changed as a  
10 result of a conversation that was raised by Mr. Jackson about a  
11 boxing commission, and, also, by the way, the NFL issue. Those  
12 were issues where, in fact, Senator Yee was voting for that  
13 legislation at any rate. Without a doubt, never changed his  
14 vote as a result of receiving any money.

15 The other is that there is a proclamation issue in which  
16 there was a donation made to his campaign. The proclamation  
17 wasn't for Raymond Chow, as it had been originally scoped. It  
18 was for the particular organization. And that organization he  
19 had given a proclamation to before.

20 There was -- also, funds were exchanged for a meeting with  
21 senators. Meetings which he did not participate in and  
22 meetings which did he not encourage a particular direction one  
23 way or another.

24 There was a -- one of the issues was a letter. The letter  
25 was written so that an agency would look into something, but he



1 didn't say you should follow this. He wrote a letter. If you  
2 look -- and actually made a phone call.

3 I think you have to look at Senator Yee's entire life.  
4 And to, as one of the individuals in the video said, to weigh  
5 both the negative and the positive in his life, because the  
6 purpose of sentencing is to affect his life and to affect  
7 others as seeing what happens to him.

8 And I would ask the Court to do that. I would ask the  
9 Court to look carefully at his service. I would ask the Court  
10 to look carefully at the manner in which he has conducted  
11 himself over his number of years.

12 I ask the Court to look at the entirety of this because  
13 this government investigation has examined his life under a  
14 microscope. And they found these -- these things. And that's  
15 it. He doesn't have a history of this.

16 And it is interesting to note that the government is  
17 seeking what's known as an upward departure. In other words, a  
18 sentence far above the top of the guideline range. It's now  
19 from -- it's 96 months or -- 96 months, above the 71 top of the  
20 guideline range. And at the same time, while they're doing  
21 that in this same case, they have made an agreement with  
22 someone who, if you look at it, the range of criminal activity  
23 that, say, Mr. Jackson is involved in, they've done a downward  
24 departure. It's a 33 guideline range, and they're looking at  
25 it as a 30 guideline range because of a deal they made in a

1 plea agreement. Now, that is inconsistent. And that is  
2 disparity.

3 With regard to this, Senator Yee, I'm aware the Court is  
4 going to impose a sentence. I think a sentence has to be  
5 imposed as the sentence which is necessary, not excessive.

6 Senator Yee should not be incarcerated for eight years.  
7 His life doesn't dictate that. Has he been punished enough?  
8 The government says no. We have a differing opinion. But the  
9 Court has to deal with that.

10 Has he been punished because of this? Yes. Has he been  
11 humiliated? Yes. Has his family been humiliated? Yes. Is he  
12 ashamed of himself? Yes. Does his wife, who is very ill, need  
13 his assistance? That's also a yes.

14 Those are all the factors before the Court orally. And  
15 you have our volumes of paper. I know the Court looked at  
16 everything. And I don't -- repeating that is not going to make  
17 it any clearer to the Court.

18 Basically, what I would ask is if the Court needs  
19 clarification on anything, I would request the Court tell me.  
20 And I would address that rather than just going on and  
21 repeating what I think we supplied to this Court that shows  
22 that Senator Yee has taken responsibility; has led a good life;  
23 has made mistakes; has admitted his mistakes. And he shouldn't  
24 be, sort of, overpunished because he happens to be a public  
25 official. Yes, he's a public official, and public trust is

1 violated. But it should not be an overarching crushing of this  
2 man and his family.

3 **THE COURT:** Thank you.

4 Senator Yee, do you want to address the Court?

5 **THE DEFENDANT:** Thank you very much, Your Honor, for  
6 the opportunity to hear some comments.

7 As I wrote a letter to you indicating that I have taken  
8 full responsibility for my actions and the crimes that I've  
9 committed. I want to appear before you to say that verbally.  
10 I have accepted/understand the crimes that I've committed.

11 Given that, with all of the actions that I've taken,  
12 nothing will ever take away those crimes and those actions.  
13 Nothing that I will ever do will take away the pain that I have  
14 caused to my family, friends, supporters, constituents, the  
15 institution that I represent, and society in general.

16 What I will say to you is that this period of time that  
17 I've had, I had opportunities to reflect on what I did; why I  
18 did it; how did I do it; and what I ought to have done to not  
19 have done that; and to do -- not to do it in the future.

20 I have started that process by meeting with individuals,  
21 talking to organizations individually and collectively, and to  
22 explain to them what I did and what I should not have done.  
23 And, hopefully, through that process that there is a healing  
24 between those individuals, organizations and myself, and a  
25 clearer understanding.

1 I think -- as my attorney had mentioned, I hope that in  
2 your sentencing of me that you look at the entire life and not  
3 just these crimes that I have committed.

4 In the 67 years of my life, I have devoted much of it to  
5 the work of the community and people here in San Francisco and  
6 the State of California.

7 And in looking broadly and expansively, hopefully that  
8 might provide a better perspective of who I am and what I'm  
9 about.

10 I say all that because I am asking for leniency. I ask  
11 for leniency for a couple of reasons. Number one, I need to  
12 continue to reach out to individuals that I have hurt,  
13 organizations that I have shamed. And to help them and for me  
14 to understand better how I should have behaved and how others  
15 should have behaved so that this does not befall any other  
16 individual whatsoever.

17 I think the other thing that I want to do is that  
18 throughout my life I've always looked at it as an opportunity  
19 to do what I can to be of help. Since my days in Berkeley, my  
20 days in the Oakland Unified School District, my time on the  
21 San Francisco Board of Education, an issue that has harmed our  
22 society for a long, long time and even now and unfortunately I  
23 think that it will continue, how is it that young individuals  
24 continue to not do well in our schools? I think that's  
25 something that I want to continue to do in my retirement.

1 I think the other point that I would raise is that my wife  
2 has given me much of my life. And much of my life has been  
3 away from her. And now that I am retired and now with the  
4 situation that I find myself in, you know, I'm not going to be  
5 employed anymore. But rather what I have done and what I want  
6 to continue is to give Maxine a little bit more of help than I  
7 have given her in the past.

8 As you know, she has progressively become more and more  
9 disabled. And I am the only able-bodied individual to help her  
10 care for herself, care for the family.

11 And so I just want to end by thanking you, Your Honor, and  
12 your staff, and the government for their consideration, to my  
13 attorney, his staff, to all those individuals who have been so  
14 helpful and who stood by me all these two years that I've had  
15 to endure to deal with this particular case.

16 And, finally, to my family, to my wife, to my children, to  
17 my sisters, they've hung in there. Particularly Michelle, who  
18 works for Mr. Lassart. She has had to endure on a daily basis  
19 reading some of the materials, understanding what I was going  
20 through, the crimes I have committed. I think that will always  
21 weigh on me. And that will always haunt me for the rest of my  
22 life.

23 So thank you very, very much.

24 **THE COURT:** Thank you.

25 Let me start by assuring you, Mr. Yee, that I have read

1 your submissions/letters on your behalf. I think Mr. Lassart  
2 is correct. You have -- I have the responsibility of  
3 sentencing the whole individual, looking at the person's life.

4 You've done a number of very good things on behalf of  
5 people who are in need of your services. And I think that  
6 that's a factor that the Court has to consider and has  
7 considered in determining sentence.

8 You raised the issue of leniency. And I think that I have  
9 to say something about that. I don't feel I should be lenient.  
10 That is that, the crimes that you committed have resulted in  
11 essentially an attack on democratic institutions.

12 We all, judges in the judiciary, legislators in the  
13 legislative branch, attorneys in the operation of the  
14 Department of Justice, we all deal with the situation that we,  
15 in our work, must be accepted by the public as having done an  
16 honest job.

17 There will be great differences of opinion as to what are  
18 appropriate policies, what are appropriate actions, what should  
19 be done in any given situation. Those are differences that  
20 every democracy recognizes and addresses.

21 But what it doesn't address, in the sense of its  
22 operation, is that there must be an acceptance by the public  
23 that the system is fair; that for the judiciary, for the  
24 legislative branch or for any branch of government to operate,  
25 it must be that the public has trust in the integrity of the

1 institution.

2 And, Mr. Yee, you abused that trust. You showed that you  
3 did not have integrity in your actions. And you brought into  
4 question the very operation of an institution of government,  
5 that, as a result of your conduct, has to be sanctioned.

6 I think under the 3553(a) factors, I think the government  
7 is correct. It's not just what I say in this sentencing  
8 proceeding, but it is what is done in this sentencing  
9 proceeding should be known to everyone, the public, people who  
10 are involved in the public sector, and people who are involved  
11 in the private sector. The citizens of this country have to  
12 have confidence that the institutions of government will  
13 operate appropriately and honestly.

14 And so I look at it from the point of view of what is an  
15 appropriate sentence given everything that you've done, and  
16 given the fact that this is a serious, serious injury to a  
17 governmental institution.

18 I don't know whether this sentence will invite legislators  
19 to engage in some risk analysis. I hope not. I hope that when  
20 they accept that position as a legislator they believe that the  
21 public is entitled to honest services. They're not there for  
22 any particular vote. They are there for their judgment. And  
23 their judgment has to be -- has to be arrived at as part of an  
24 honest process of consideration by a legislator.

25 So when you look at the crimes that you have -- that you

1 have committed, I think there are several levels. Certainly,  
2 it is wrong to grant favors to constituents based upon campaign  
3 contributions. That's wrong. It's not permitted by law.

4 But the more significant violation of trust, I think, is  
5 indicating -- whether it's true or not -- that your vote was  
6 for sale; that you would vote one way or another way depending  
7 on a campaign contribution. Because it is the vote, it is the  
8 vote that is a key part of the legislative process. And that,  
9 in the Court's view, is a very serious violation of trust.

10 Votes are not for sale. Positions are not for sale. And  
11 your conduct -- and it's on hours and hours of tape indicating  
12 that it was for sale -- was a violation of trust.

13 To that is added, in the Court's view, something that was  
14 inexplicable. And that is your participation in the weapons  
15 conspiracy.

16 Putting aside for a moment -- and there's no nice way to  
17 say it -- basically a hypocritical position on your part in  
18 favor of gun control, and then engaging in a process whereby  
19 automatic weapons/not automatic weapons would be brought into  
20 the United States is frightening and unfathomable.

21 The harm that can be caused today, as we know it, by  
22 weapons is incalculable. And how you could participate in this  
23 conspiracy is -- I can't express it, actually. I can't tell  
24 you how disturbing it is. The harm that could be caused by  
25 these weapons is incalculable.



1           And I looked very hard at the evidence to try to figure  
2 out why is a person who has publicly spoken out against such  
3 things as importation of weapons or spoken in favor of gun  
4 control, sanctioned and participated in this scheme. And the  
5 answer, I think, comes out frequently on the tape, is for  
6 money. You did it for money.

7           And the money -- I don't know that it necessarily would  
8 have been a self-aggrandizing, a better house, a better this or  
9 a better that, but it would be perpetuation of your power.

10          And you were willing to go entirely contrary to your  
11 stated position and engage in this kind of transaction for  
12 money. And that, to me, is the most venal thing and most  
13 dangerous thing that I've seen that you've done.

14          I looked at the number of factors. And I believe that,  
15 overall, I should fashion a sentence that is sufficient but not  
16 greater than necessary in order to impose a sentence.

17          I am imposing a sentence within the guideline range. I  
18 think that that is appropriate under these circumstances. I  
19 think the government has excellent arguments why I should  
20 depart upward. But I also think that when you look at the  
21 overall consideration of imposing a sentence that is sufficient  
22 but not more than necessary to achieve the purposes, I believe  
23 the sentence I'm about to impose does achieve that purpose.

24          I, of course, understand your family's situation. I  
25 understand the enormous impact it's had on your family and your

1 wife's condition. And that obviously is something that I  
2 considered. But I also considered the fact that almost every  
3 defendant who comes before me has committed crimes, when  
4 they've either been convicted or pled guilty, that has an  
5 enormous impact on their family, and, in many cases, destroys  
6 the family unit; in many cases causes such grief, pain and  
7 sorrow to an innocent person that you feel as a judge that  
8 there ought to be some other way to sentence people so that  
9 they are the only people who suffer the adverse consequences.  
10 I know of no other way. I would -- I would embrace some other  
11 way.

12 I don't want to see your wife hurt. I don't want to see  
13 families hurt. It's not my idea to try to punish them. But,  
14 you see, the problem is that when anybody is faced, as the  
15 government points out, with a choice -- Am I going to do X or  
16 am I going to do Y? -- they ought to think that if they do one  
17 thing which is illegal they will be harming their family as  
18 well as themselves, and, of course, in this particular case the  
19 public.

20 And so while I am mindful of what you have said, I am not  
21 taking that into consideration in imposing a sentence in this  
22 particular case.

23 Accordingly, pursuant to the Sentencing Reform Act of  
24 1984, it is the judgment of the Court that Leland Yee is hereby  
25 committed to the custody of the Bureau of Prisons to be

1 imprisoned for a term of 60 months.

2       Upon release from imprisonment, the defendant shall be  
3 placed on supervised release for a term of three years. Within  
4 72 hours of release from the custody of the Bureau of Prisons  
5 the defendant shall report in person to the probation office in  
6 the district to which the defendant is released.

7       While on supervised release, the defendant shall not  
8 commit another federal, state, or local crime; shall comply  
9 with the standard conditions that have been adopted by this  
10 court, except that the mandatory drug testing provision is  
11 suspended; and shall comply with the additional conditions:

12       Defendant shall not maintain a position of fiduciary  
13 capacity without the prior permission of the probation officer.

14       Defendant shall pay any fine or special assessment that is  
15 imposed by this judgment and remains unpaid at the commencement  
16 of the term of supervised release.

17       Defendant shall submit to a search of his person,  
18 residence, office, vehicle or any property under his control.  
19 Such a search shall be conducted by a U.S. Probation officer or  
20 any federal, state, or local law enforcement officer at any  
21 time, with or without suspicion. Failure to submit to such a  
22 search may be grounds for revocation. Defendant shall warn any  
23 residents that the premises may be subject to searches.

24       The defendant shall not have contact with any codefendant  
25 in this case.

1       The defendant shall cooperate in the collection of DNA as  
2       directed by the probation officer.

3       Defendant shall not own or possess any firearms,  
4       ammunition, destructive devices or other dangerous weapons.

5       Further ordered the defendant shall pay the United States  
6       a special assessment of \$100, which will be due immediately.  
7       When incarcerated, payment of criminal monetary penalties are  
8       due during imprisonment at the rate of not less than \$25 per  
9       quarter. Payment shall be made to the Bureau of Prisons Inmate  
10      Financial Responsibility Program.

11      Criminal monetary payments shall be made to the Clerk,  
12      U.S. District Court, 450 Golden Gate Avenue, Box 36060,  
13      San Francisco, California 94102.

14      Further ordered the defendant shall pay to the  
15      United States a fine of \$20,000, which shall be due immediately  
16      in a lump-sum payment, within five days of sentencing.

17      Defendant's interest in the following property shall be  
18      forfeited to the United States: \$6,066 seized from 1370 24th  
19      Avenue, San Francisco, California, on March 26, 2014; and  
20      \$27,400 in U.S. currency seized on February 18, 2015, from the  
21      bank account number which ends in 2825, held in the name of  
22      Leland Yee for Secretary of State 2014, at Wells Fargo Bank  
23      San Francisco, California.

24      I would also note that even if the guideline range was  
25      lower, that is, was at 24, the Court would have imposed the

1 same sentence that the Court has imposed in this case.

2 **MS. BADGER:** Couple --

3 **THE COURT:** Yes, go ahead.

4 **MS. BADGER:** Your Honor, when you entered your oral  
5 judgment about the forfeiture order, I believe the Court said  
6 \$6,066 --

7 **THE COURT:** Am I wrong?

8 **MS. BADGER:** We've made an adjustment. The  
9 preliminary order of forfeiture said \$1,066.

10 **THE COURT:** It will be amended to say that, yes.

11 **MS. BADGER:** Thank you.

12 **THE COURT:** The defendant will be ordered to surrender  
13 within 30 days of today's date. I will sign the judgment and  
14 commitment within a day.

15 And if there's any difficulty in -- in the designation of  
16 a facility, please come back to the Court. Otherwise, you have  
17 the option of surrendering to the U.S. Marshal's Office, 450  
18 Golden Gate, on the 20th floor by that -- within 30 days.

19 **MR. LASSART:** Your Honor, we would ask the Court for a  
20 recommendation of Taft in this matter.

21 **THE COURT:** Yes. That will be -- of course, I don't  
22 control the Bureau of Prisons. They make up their own mind.  
23 I'll put that recommendation in. All right.

24 **MR. LASSART:** Thank you, Your Honor.

25 **THE COURT:** That concludes that sentencing. Let's

1 move on --

2 **MS. BADGER:** Thank you, Your Honor.


3 (At 11:06 a.m. the proceedings were adjourned.)

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7  
8 **CERTIFICATE OF REPORTER**

9 I certify that the foregoing is a correct transcript  
10 from the record of proceedings in the above-entitled matter.  
11

12 DATE: Wednesday, April 21, 2016  
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16 \_\_\_\_\_  
17 Katherine Powell Sullivan, CSR #5812, RMR, CRR  
18 U.S. Court Reporter  
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